



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

**Texas Liquor Control Board
Austin, Texas**

Gentlemen:

Opinion No. 0-1765

**Re: Authority of Limitation of
Payments Board to authorize
Texas Liquor Control Board
to use funds to employ State
Auditor to audit the accounts
of the Texas Liquor Control
Board.**

You have presented to the Limitation of Payments Board, composed of the Governor, the State Treasurer, and the Attorney General, your application for authority from that body to spend \$7500.00 "out of the Liquor Tax Fund," to be made available to the State Auditor for an audit of the accounts of the Texas Liquor Control Board.

Your application states:

"That such a fund is available by virtue of law to the Texas Liquor Control Board, such fund being the Liquor Tax Fund; from which fund there is allocated money to pay the regular appropriations made for maintenance of the Texas Liquor Control Board, as well as the other allocations made to the Old Age Assistance Fund, the Available School Fund, and the General Revenue Fund."

Section 46 of the Texas Liquor Control Act provides as follows:

"Receipts from the sale of liquor stamps shall be deposited in the State Treasury as follows: 1/4 to the credit of the Available School

Fund, and 3/4 to the credit of the Texas Old Age Assistance Fund. All revenues derived from the sale of permits provided for under Article 1 shall be deposited to the credit of the Texas Old Age Assistance Fund."

The departmental appropriation bill passed by the 46th Legislature, S. B. 427, at p. 87 of the Senate Journal, provides as follows by special rider, after appropriating, by itemization, some \$732,690.00 per fiscal annum to the Texas Liquor Control Board:

"Subject to the limitations set forth in the provision appearing at the end of this Act, all appropriations herein made for the Texas Liquor Control Board shall be paid out of proceeds derived from the sale of alcoholic beverage stamps before such proceeds are allocated to respective funds required by law, and said amount is hereby appropriated therefrom for each of the fiscal years ending in August 31, 1940 and August 31, 1941."

The jurisdiction of the Limitation of Payments Board, set up in the departmental appropriation bill passed by the 46th Legislature, is limited to the situation where the amount of the fees, receipts, special or other funds available for use by a department, are more than sufficient to pay the items designated in the departmental appropriation bill to be paid therefrom, in which event the department to which the fees, receipts, special or other available funds are appropriated may, "if necessary to adequately perform the functions of said department, use any portion of said surplus fees, receipts, special funds, or other available funds; . . ."

There could exist a "surplus" in the special fund, subject to the jurisdiction of the Limitation of Payments Board, only in the situation where the special fund is dedicated to the use and benefit of the Texas Liquor Control Board for the administration of the affairs of that department, and where the Legislature appropriated only a portion of said fund expressly by virtue of the provisions of the departmental appropriation bill, leaving the surplus in the special fund, over and above the amount of the items specifically appropriated by the Legislature therefrom, to be distributed by the Limitation of Payments Board under the authority therein con-

ferred. There is no dedication of the liquor tax fund to the Texas Liquor Control Board for the expenses involved in administering the affairs of that body. On the contrary, the only amounts out of said Fund available to that Board in any event for expenditure in operating the department are those expressly appropriated to it by the Legislature in the departmental appropriation bill. The balance of the fund is dedicated and allocated to the Available School Fund and the Texas Old Age Assistance Fund, by virtue of the law which creates the fund. The balance or "surplus" in such fund is not "available" for the use of the Texas Liquor Control Board, and in such a situation there can exist no "surplus" in that fund subject to the jurisdiction of the Limitation of Payments Board.

The application presented by you is defective in several particulars, and for such reason is not sufficient in any event to invoke the jurisdiction of the Limitation of Payments Board. However, since we have determined that the Board would not have jurisdiction to grant your request if your application were properly prepared, we refrain from pointing out to you at this time the particulars in which the application is defective.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild

R. W. Fairchild
Assistant

RWF-MR

APPROVED DEC 13, 1939

Gerard B. Mann

ATTORNEY GENERAL OF TEXAS

